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*Heritage Bank, N.A.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

HERITAGE COMMUNITY BANK, A New  
Jersey Chartered Bank

Plaintiff,

v.

HERITAGE BANK, N.A., a proposed  
National Association to be engaged in the  
Business of banking.

Defendant.

Civil Action No. 2:08-cv-4322-JAG-ES

**DECLARATION OF DAVID S. BAGATELLE**

I, David S. Bagatelle, declare, depose and state as follows:

1. My name is David S. Bagatelle. I am over 18 years of age and am competent to make this Declaration.

2. I have personal knowledge of the following facts, and if called as a witness, I could and would testify competently as to their truth. I offer this Declaration in opposition to the application for preliminary injunction filed by Heritage Community Bank in this litigation.

3. I am the President and Chief Executive Officer of a new proposed national bank called "Heritage Bank, N.A." I am and have been part of the organizing group to form this new bank. Although Heritage Bank, N.A. has received conditional approval from federal regulators,

Heritage Bank, N.A. has not yet received final approval to commence its commercial operations. Heritage Bank, N.A. has not been issued its national bank charter and therefore has not yet commenced - and is prohibited by law from commencing - any banking operations. We expect to receive the requisite final regulatory approvals from the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC), and open for business, on or about November 24, 2008.

4. To date, Heritage Bank, N.A.'s only business operations have involved its organizing activities, including its efforts to raise sufficient capital to meet the regulatory requirements to commence operations. Because its commercial and private banking operations have not yet commenced, Heritage Bank, N.A. does not yet have any customers or revenues. Although it has made some initial efforts at preliminary marketing to potential commercial and private banking customers for when the bank opens, its primary solicitations to date have focused on raising the necessary operating capital to satisfy the regulatory requirements.

5. Prior to selecting the name "Heritage Bank, N.A.," the organizing group commissioned from Thomson CompuMark a "full" trademark search for the "Heritage Bank" name. A true and correct copy of the search report from Thomson is attached hereto as Exhibit A. As can be seen from the results of the search, there are hundreds of financial institutions that use the term "heritage" as part of the business's name or trademark, including "United Heritage Bank" that has an address listed in New Jersey. Presumably like so many others who use the term "heritage," the organizing group for Heritage Bank, N.A. liked "heritage" for the suggestion of family, experience, legacy and quality that the name describes. Given the number of other users, we in the organizing group believed that no single entity could claim the rights to the name "heritage" apart from its own specific entity name. Based on my observations, it is fairly

common to have many banks with names that share a common descriptive or suggestive term such as “United,” “Signature,” “First,” “Pinnacle,” “Summit” or even common geographic location, along with other terms and/or logos that distinguish them. In fact, when I previously founded Signature Bank, we were unable to protect our bank name because of the common use of similar names. Since there did not appear to be any other financial institutions specifically-named “Heritage Bank” actively operating in the New York area, and with many others using the “heritage” name for their own institutions, we selected that name for the national bank we were seeking to open in New York. Although we decided to use the name, we have not attempted to register the name with the United States Patent & Trademark office or any other comparable state agency.

6. Heritage Bank, N.A. has identified its primary trade area as New York, Kings, Nassau and western Suffolk counties -- all in New York State. As stated in our Interagency Charter Application to the Office of OCC and FDIC, Heritage Bank, N.A. will begin only with a main office in New York City, New York and two additional branch locations in Melville, New York and Brooklyn, New York. All of our initial start-up operations will be conducted in New York, around the metropolitan area of New York City. In addition, none of our banking offices will be traditional retail or consumer-oriented banking offices and, instead will be more typical of commercial or private client banking relationship offices, focusing on relationships for commercial and private banking as well as wealth management services to the owners, principals and clients of our commercial clients. Our main office will be located in an interior office at 623 Fifth Avenue in Manhattan, on the 11<sup>th</sup> and 12<sup>th</sup> floors of a commercial office building with no exterior signage. Our Melville branch office will be located in an interior office inside of a commercial office building. Finally, our Brooklyn branch office will be located in a ground

floor office inside of a commercial office building set back from the street. None of our offices will be designed for retail/consumer traffic, but will be primarily established to offer our commercial and private banking, and for business development officers holding private client meetings. Access to our banking offices will be designed for commercial and private banking business and not for walk-up retail consumers. All marketing materials will reflect this distinct business strategy, differing significantly from typical retail or consumer banking advertisements and solicitations.

7. As we further explained in our Charter Application, only upon the review and approval of the OCC, we are considering the strategic expansion of our banking operations into other geographic areas, but we readily acknowledged that any additional branches would require regulatory approval before we could operate them. We have identified several locations in the metro-New York City area, including a potential location in Essex County, New Jersey, for possible expansion. Although we have an option on potential office space, we have not sought the necessary regulatory approval to operate or open an office anywhere else outside of our three current New York offices, and New Jersey may not even be a priority for expansion. Our plan is to establish Heritage Bank, N.A. and its own distinct identity in New York before any expansion into any other region. Further, any such expansion into other areas would not include traditional retail/consumer banking operations, but would instead be consistent with the manner in which our commercial and private banking services are delivered from our primary offices in New York. It is highly unlikely that customers who are granted access to a Heritage Bank, N.A. office in New York (or even in another area if we ultimately expand) would believe they are entering a traditional community bank such as Heritage Community Bank, which focuses almost entirely on retail, consumer accounts rather than commercial and private banking.

8. Thus, although we expect to serve certain targeted clients who may live or work in New Jersey, Heritage Bank, N.A. will not have an office location in New Jersey at inception and will not establish any office there until we receive the necessary regulatory approval of the OCC. Once the timing is appropriate, we plan to open an office in Essex County, New Jersey, where we have the option on office space, and we have hired relationship managers with connections in New Jersey. These managers, however, will build a brand recognition consistent with our current New York model that is separate and distinct from any brand recognition of Heritage Community Bank that currently operates only in Morris County, New Jersey.

9. Building a separate brand image from Heritage Community Bank should not be very difficult because the target client for our Heritage Bank, N.A. is significantly different from the target customer of the traditional retail banking services offered by Heritage Community Bank. Although it is easy to look to banking similarities such as general deposits and loans, the services to be offered by Heritage Bank, N.A. will be highly tailored, individualized services for commercial and private banking that is distinct from the typical retail or consumer loans and other banking services offered by Heritage Community Bank. In addition, the manner in which Heritage Bank, N.A. targets its customers and delivers its services is, and will be, very different from that of a consumer-oriented retail community bank such as Heritage Community Bank in New Jersey. Indeed, a simple review of Heritage Community Bank's website, including its "home" page, shows its focus on retail, consumer banking products that will be distinct from the commercial and private banking services offered by our Heritage Bank, N.A. in New York. Heritage Bank, N.A. does not intend to offer any retail consumer banking products.

10. Consistent with the non-retail presence of Heritage Bank, N.A.'s banking offices, we will not devote our business development/marketing budget to retail, consumer banking

activities or broadly-distributed advertisements to the general public because our bank does not offer consumer banking services. Instead, the vast majority of our business development and marketing budget will be utilized by the bank's relationship teams to develop business opportunities through personal contacts and relationships, and to maintain existing client relationships, for our commercial and private banking business. Accordingly, Heritage Bank, N.A. will focus on distinct private client business relationships developed through its non-retail banking office presence and personal contacts from its business development teams, not through public advertising. In other words, rather than opening retail storefront banking locations and utilizing public marketing efforts to serve a traditional consumer bank customer base, we plan to utilize targeted relationship teams that serve individual commercial customers and clients. As a result, our product offerings and service levels will be very different from a traditional community bank, or even from a typical national banking institution that focuses on consumer banking rather than commercial and private banking.

11. We intend primarily to target specific small and mid-sized businesses with whom our relationship teams, executive management or organizers have pre-existing relationships or those businesses who are referred to us from existing clients and other referral sources such as attorneys and CPAs. As discussed above, we do not intend to engage in any material amount of public advertising to promote the bank's services, but instead to utilize business development dollars to cultivate individual client relationships with select companies and high net worth individuals rather than the broader banking public. Consistent with the commercial and private banking business model, we also intend to target the owners, principals and senior managers of those businesses to offer commercial, private banking and wealth management services.

12. Given these differences in services, combined with the difference in names, the relevant customers and potential customers are not likely to be confused between our bank or the services we plan to offer that are distinctly different from Heritage Community Bank. Since our organization efforts began, we have sent out many solicitations and held more than 30 meetings with presentations to well over 1000 attendees in and around New York City, including areas in Manhattan, New Jersey, Long Island, Pennsylvania, Delaware, Connecticut and Massachusetts. Not one of the individuals we solicited or met with inquired about or otherwise mentioned Heritage Community Bank, even after we used the disclaimer, as explained below. We have never received any inquiries whatsoever about whether we are affiliated with Heritage Community Bank or whether we are another branch of Heritage Community Bank. In addition, no Heritage Community Bank customers have contacted us to ask about our services or whether we are affiliated.

13. The only contact we received from anyone affiliated with Heritage Community Bank was a letter from Heritage Community Bank's attorneys accusing us of trademark infringement and unfair competition for planning to use the "Heritage" name for our new bank. We do not believe there is any likelihood of confusion, and we certainly have no intention to derive a benefit from the alleged "good will" of Heritage Community Bank, if any such good will even exists. On the contrary, we have sought and will continue to seek to establish our own brand identity, that will be associated with our own services that are distinct from those offered by Heritage Community Bank, just as the many other financial institutions using the term "heritage" as part of their name have done.

14. Nevertheless, to show our good faith and to allow us time to further distinguish our bank and the services to be offered under our "Heritage Bank, N.A." brand, we used a

disclaimer on our solicitation and advertising materials after we received the accusations of infringement from Heritage Community Bank. For example, in one of our advertisements that ran in August during the capital raise phase of our organization, and which included limited circulation in areas in New Jersey, we added a disclaimer to the advertisement specifically designed to avoid any potential for confusion. The disclaimer reads as follows: “Heritage Bank, N.A. (In Organization), headquartered at 623 Fifth Avenue, 11th floor, New York NY 10022 is not affiliated with Heritage Community Bank, headquartered at 1206 Sussex Turnpike, Randolph, NJ 07869, or any other Heritage Bank or similarly named bank presently in operation.” A true and correct copy of the advertisement is attached hereto as Exhibit B. We have included similar disclaimers on other advertisements and solicitations as well, and we have not received a single inquiry about it. However, we do not believe that this disclaimer is necessary given our different marks, services, business models and strategic goals. Therefore, we do not intend to use the disclaimer in the future.

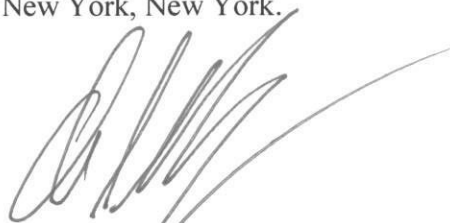
15. Furthermore, upon receiving the letter from Heritage Community Bank, we made numerous offers to compromise by further distinguishing our Heritage Bank, N.A. from Heritage Community Bank, including by adding additional descriptive terms to our proposed name. Heritage Community Bank, however, took the position that *any* use of the term “heritage” by our new bank would infringe the “Heritage Community Bank” trademark. Not only are there hundreds of other entities using that name, including United Heritage Bank already in New Jersey, but we have raised over \$85 million in capital (in cash and commitments) under the “Heritage” name, received permission from federal regulators to operate under that name, and have recruited and hired employees using that name, and are now committed to that name. Having to change the name prior to opening to remove “heritage” altogether could delay the



bank's opening even in New York and cost us hundreds of thousands of dollars. Thus, we were unable to reach a compromise or other resolution.

I swear under penalty of perjury that the foregoing is true and correct.

Executed this 17<sup>th</sup> day of November, 2008, in New York, New York.

A handwritten signature in black ink, appearing to read 'D. Bagatelle', is written over a horizontal line.

David S. Bagatelle